IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

OP.No. 15746 of 2002(Y)

PETITIONER:

G. SUBRAMANIAN, 'TAKSHASILA',
T.C.28/1408(2), NEERAZHI COMPOUND,
SREEKANTESWARAM, TRIVANDRUM-695 023.

BY ADV. SRI.B.RAMAN PILLAI
SRI.GEORGE PHILIP
SRI.R.ANIL

RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, 4TH FLOORL JEEVAN DEEP, SANSAD MARG (PARLIAMENT ST.) NEW DELHI - 110 001.

2. THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS, CENTRAL REVENUE BUILDING, I.S. PRESS ROAD, ERNAKULAM, KOCHI-682 018.

BY ADV. SRI.SAJEESH.K.B., ADDL.CGSC
SRI.JOHN VARGHESE, SCGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P. No.15746/2002

APPENDIX

PETITIONER'S EXHIBITS:

1.	EXHIBIT.P1:	TRUE COPY OF THE PETITION DATED 2.11.1998 MADE BY THE PETITIONER TO THE PRINCIPAL SECRETARY, HOME DEPARTMENT, GOVERNMENT OF KERALA.
2.	EXHIBIT.P2:	TRUE COPY OF THE SHOW CAUSE NOTICE DATED 10.5.1999 SUBMITTED BY THE PETITIONER BEFORE THE DEPUTY COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS, THIRUVANANTHAPURAM – 695033.
3.	EXHIBIT.P3:	TRUE COPY OF THE ADJUDICATION ORDER C. NO.VIII/10/2/99/212 IN SL. NO.01-2000-CUS. DATED 7.1.2000 PASSED BY THE JOINT COMMISSWIONER OF CENTRAL EXCISE AND CUSTOMS, THIRUVANANTHAPURAM -1.
4.	EXHIBIT.P4:	TRUE COPY OF THE ORDER IN APPEAL NO.148/2001/CUS. DATED 16.5.2001 PASSED BY THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS (APPEALS) COCHIN – 18.
5.	EXHIBIT.P5:	TRUE COPY OF THE ORDER NO.49/2002 IN F. NO.373/50/B/2001-RA.CUS. DATED 28.2.2002 PASSED BY THE JOINT SECRETARY TO GOVERNMENT OF INDIA

(TRUE COPY)

P.A. TO JUDGE

S.SIRI JAGAN, J.

O.P No.15746 OF 2002

Dated this the 18th day of January, 2007

JUDGMENT

Petitioner was arresed under the Customs Act and later detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. The allegation against the petitioner was that he had abetted the attempted smuggling of currencies by one Lawrence Joseph of Vizhinjam at Thiruvananthapuram Airport on 8.10.1998. A statement was obtained from the petitioner which according to the petitioner was under coersion which was immediately retracted by him by a complaint dated 2.11.1998 after his arrest on 31.10.1998. Later on adjudication proceedings were proceeded with under the Customs Act which resulted in Ext.P3 order by which a penalty of Rs.2,00,000/- (Rupees two lakhs only) was imposed on the petitioner. The appeal filed by the petitioner was also dismissed by Ext.P4 order. The petitioner is challenging Exts.P3 and P4 in this Writ petition.

2. Several grounds are taken by the petitioner against Exts.P3 and P4. One of those is that the decision to impose penalty on the petitioner has been taken relying on the statements of M/s.Lawrence Joseph, Victor Virgin Davidson, Benny J.Soloman, and H. Janardhana Iyer who were also the accused in the case and were imposed with penalty as per Ext.P3 order. The petitioner submits that apart from the retracted statements obtained from the petitioner, there was no other independent evidence to connect the petitioner for the alleged offences in question, except the statements of the co-accused. The petitioner submits that he had specifically requested in his reply to the preliminary show cause notice, for an opportunity to cross examine the said persons and since the same has been denied to him, the entire adjudication proceedings are vitiated by violation of principles of natural justice and therefore, Exts.P3 and P4 are liable to be quashed.

3. A counter affidavit has been filed on behalf of the respondents. In the same, the fact that the petitioner had in fact retracted the statement made by him on the next working day itself is not disputed. It is also not disputed that petitioner had in fact

requested for an opportunity to cross examine M/s.Lawrence Joseph, Victor Virgin Davidson, Benny J.Soloman, and H. Janardhana Iyer and that opportunity was denied to the petitioner to cross examine them, by the adjudicating authorities. The only contention is that since those persons were co-accused in the case and not independent witnesses, the petitioner has no right to cross-examine them.

4. It is not disputed in the counter affidavit that the petitioner was found guilty on the basis of the statements of the said persons also. In fact, a reading of Ext.P3 also would go to show that the decision has been taken by the adjudicating authorities on the basis of the evidence given by M/s. Lawrence Joseph, Victor Virgin Davidson, Benny J.Soloman, and H. Janardhana Iyer. It is trite law that when the statement or evidence of a particular person is relied upon for the purpose of finding a person guilty, necessarily natural justice requires that the person who is to be found guilty on the basis of the evidence of those persons should be given an opportunity to cross examine them to prove his innocence, if he requests for such an opportunity. When it is admitted before me that such an

opportunity has been actually requested for by the petitioner and was denied to him and it is revealed from the adjudication proceedings that it is on the basis of the evidence given by those persons that the petitioner was found guilty by the denial of such opportunity is in violation of principles of natural justice. That being so, the entire proceedings culminating Exts.P3 and P4 are violative of the principles of natural justice as against the petitioner, and it is found accordingly.

In the above circumstances, Exts.P3 and P4 to the extent, it relates to the petitioner are quashed. However, this shall not stand in the way of the respondents re-adjudicating the matter in accordance with law after affording an opportunity to the petitioner to cross-examine those witnesses as requested for by the petitioner. The writ petition is disposed of as above.

(S.SIRI JAGAN, JUDGE)

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